ABU HABIDAH YAACOB

v.

PENGARAH JABATAN PERHUBUNGAN PERUSAHAAN JOHOR BAHRU

HIGH COURT MALAYA, JOHOR BAHRU
LC VOHRAH J
[ORIGINATING MOTION NO. 25-23 OF 1989]
30 JUNE 1990

ADMINISTRATIVE LAW: *Certiorari - Mandamus - Incorrect basis of fact - Error of law on the face of the record.*

STATUTORY INTERPRETATION: *"Dismissed" - "Just cause or excuse" - Reinstatement - Section 20(1) Industrial Relations Act - The point from which time was - Internal appeal procedure.*

The applicant who was employed by Syarikat Telekom Malaysia Berhad (STMB) as a storekeeper was, pursuant to an inquiry by the disciplinary committee, dismissed by letter dated 29 September 1988. On 19 October 1988 the applicant appealed to the Appeal Committee and on 24 December 1988 received a letter from the committee affirming the decision of the disciplinary committee, this letter was dated 6 December 1988.

The applicant then lodged a complaint of unfair dismissal with the respondent under s. 20(1) of the Industrial Relations Act 1967 (the Act) on 12 January 1989; this was rejected by the respondent on the ground that these representations had not been made within 30 days of 29 September 1988, this being, in the view of the respondent the date of dismissal. The plaintiff applied for an order of *certiorari* to quash the decision of the respondent and for an order of *mandamus* directing the Industrial Relations Officer to deal with the plaintiff representations according to law.

The issue for determination by the Court was whether the 30-day period prescribed by s. 20(1) of the Act should commence from the date of receipt of letter from the Appeal Committee on 24 December 1988 or from the date stated in the letter of dismissal dated 29 September 1988 from the disciplinary committee.

Held:

[1] Following the principle stated in *West Midlands Co-operative Society Ltd. v. Tipton*, the domestic appeal procedure suspends the notice of dismissal, if the appeal fails, the effective date of dismissal was the date stated in the letter of dismissal and not the date of determination of the appeal or the date when the result of this determination was communicated to the applicant.

[2] The respondent did not err in law in interpreting the word "dimissed" and had not acted upon an incorrrect basis of fact; neither was there an error of law on the face of the record.

[Applicant's application dismissed.]

Cases referred to:
V. Sinnathamboo v. Minister for Labour and Manpower [1981] 1 MLJ 25
Fung Keong Rubber Manufacturing (M) Sdn. Bhd. v. Lee Eng Kiat & Ors. [1981] 1 MLJ 238
Goon Kwee Phoy v. J. & P. Coats (M) Bhd. [1981] 2 MLJ 129
West Midlands Co-operative Society Ltd. v. Tipton [1986] 1 All ER 513
J. Sainsbury Ltd. v. Savage [1981] 1 CR 1

Legislation referred to:
Industrial Relations Act 1967, s. 20

For the applicant - Gana Muthusamy; M/s. Gana Muthusamy & Co.
For the respondent - Sauffee Affandi, Federal Counsel

JUDGMENT

LC Vohrah J:

This is an application by way of notice of motion for an order of *certiorari* to quash the decision of the respondent that the applicant was time-barred from making representations to the Director-General of Industrial Relations under s. 20(1) of the Industrial Relations Act 1967 ("the Act") to the effect that he had been dismissed without just cause or excuse by Syarikat Telekom Malaysia Berhad ("STMB") and also for an order of *mandamus* directing the Industrial Relations Officer, Johor Bahru, to receive and deal with the representations in accordance with law.

The relevant facts of the case are as follows. The applicant was employed by STMB 1982 as a store-keeper. On or about 22 July 1988 he received a notification dated 19 July 1988 (Exh. AHY1, encl.2) from STMB informing him, *inter alia*, that he had discharged his duties in a manner adversely effecting the financial interest and image of STMB and that an inquiry would be held. Pursuant to the inquiry, the disciplinary committee by letter dated 29 September 1988 (Exh. AHY2, encl. 2), notified him that the charges instituted against him had been proved and that he was dismissed from his job from the date of the letter. He was also informed that according to STMB's disciplinary regulations he had a right to appeal against the dismissal to the Appeal Committee through his head of department within 30 days of the date of the letter. Accordingly, by letter dated 19 October 1988 (Exh. AHY3, encl. 2), well within the 30-day period limited for appeal, the applicant filed his appeal to the Appeal Committee and raised therein several issues relating to the conduct of the disciplinary proceedings. The Appeal Committee by letter dated 6 December 1988 (Exh. AHY4, encl. 2) informed the applicant that it had considered his appeal and decided that "there was not anything to cause it to alter or rescind the decision of the disciplinary committee to dismiss him." This letter was received by the applicant on 24 December 1988. The applicant then visited the office of the respondent some time later in the same month to lodge a complaint of unfair dismissal against STMB but was advised by the respondent that he was out of time for the purpose of making representations in writing under s. 20(1) of the Act. Nevertheless, the applicant lodged representations in writing dated 12 January 1989 (together with copies of relevant documents (Exhs. CC5, encl. 8) with the respondent for re-instatement under that section as he was dissatisfied with his dismissal. Upon receipt of the written representations on 12 January 1989, the respondent by letter dated 14 January 1989 (Exh. PPPJD, encl. 18) rejected them on the ground that they had not been made within thirty days of his dismissal as prescribed. In the view of the respondent the 30-day period commenced from 29 September 1988, the date of his dismissal as stated in the letter AHY2 sent to him and not from 24 December 1988, the date when the letter AHY4 from the Appeal Committee rejecting his appeal was communicated to him.

At the relevant time s. 20(1) of the Act read:

> Where a workman who is not a member of a trade union of workmen considers that he has been dismissed without just cause or excuse by his employer he may, within thirty days of the dismissal, make representations in writing to the Director-General to be reinstated in his former employment; the representations may be filed at the office of the Director General nearest to the place of employment from which the workman was dismissed.

Counsel for the applicant contends that in refusing to entertain the applicant's representations the respondent acted outside his jurisdiction and made a decision which was wrong in law. He argues that the 30-day period prescribed by s. 20(1) should commence from the date when he received the rejection letter from the Appeal Committee, i.e. 24 December 1988 (in which event he would be well within time) and not from the date stated in the letter of dismissal, i.e. 29 September 1988 because s. 20(1), he argues, has been couched in subjective terms by providing that the aggrieved person may make representations for his re-instatement only when he considers he has been dismissed without just cause or excuse and, in the instant case, the applicant considered he was dismissed only when he was informed by the Appeal Committee of its rejection of his appeal. Federal Counsel on behalf of the respondent, on the other hand, contends that on a literal interpretation of the provision the effective date should be 29 September 1988 because that was the date when he was actually dismissed by STMB.

I shall now proceed to consider the relevant authorities that have been submitted for determination of the effective date.

There is no question that the 30-day limit prescribed by s. 20(1) was a mandatory provision (it is 60 days now) and failure to comply with this strict time limit would be fatal to the applicant: see *V. Sinnathamboo v. Minister for Labour and Manpower* [1981] 1 MLJ 25; *Fung Keong Rubber Manufacturing (M) Sdn. Bhd. v. Lee Eng Kiat & Ors.* [1981] 1 MLJ 238. Counsel for the applicant however has cited the case of *Goon Kwee Phoy v. J. & P. Coats (M) Bhd.* [1981] 2 MLJ 129 wherein Raja Azlan Shah CJ (Malaya) (as he then was) said (at p. 136):

> (Section 20(1)) is, in our view deliberately, couched in subjective terms. Where a non-union workman considers that his dismissal is without just cause or excuse, he may make representations for his reinstatement. It is not whether he had been dismissed without just cause or excuse; but it is how he considers he has been treated by his employer that constitutes the test for his action.

and has submitted that, in line with the last statement, the applicant considered himself as dismissed only after the outcome of the appeal was conveyed to him, when time would begin to run, as the internal appeal procedure formed an essential part of the dismissal process under his contract of employment and it was incumbent on him to exhaust his domestic remedies before availing himself of his statutory remedy under s. 20(1). It is to be noted that the observation cited above was made in the context of a termination by contractual notice and for no reason and it was explained that an aggrieved workman could consider such a termination, even if ungrounded on any just cause or excuse, as dismissal without "just cause or excuse" within the meaning of that section for representations to be made. It did not relate to the specific question as to when time began to operate for the purpose of making representations. Counsel for the applicant cited *West Midlands Co-operative Society Ltd. v. Tipton* [1986] 1 All ER 513 for its pronouncement that "an internal appeal procedure was an integral part of the dismissal process" but that case, in adopting the analysis which found favour in *J. Sainsbury Ltd. v. Savage* [1981] 1 CR 1, also

pronounced that "if the domestic appeal succeeds the employee is re-instated with retrospective effect; if it fails the summary dismissal takes effect from the original date." Accordingly the effect of the applicant's utilising the domestic appeal procedure was to suspend the notice of dismissal and when the appeal failed, the effective date of the applicant's dismissal was the date stated in the letter of dismissal and not the date of the determination of the appeal or the date when the result of this determination was communicated to him.

I do not consider that the respondent erred in law in interpreting the word "dismissed" or that he acted upon an incorrect basis of fact or that there is an error of law on the face of the record. I would accordingly dismiss this application with costs.

Also found at [1990] 2 CLJ 388